

**TENNESSEE BOARD OF PHARMACY
MARCH 16 - 17, 2004
ROOM 160 – DAVY CROCKETT TOWER
NASHVILLE, TN**

BOARD MEMBERS PRESENT:

Robert Shutt, President
Reggie Dilliard, Vice President
Julie Frazier, Member
Sheila Mitchell, Member
James R. Mitchell, Member
Forrest Parmley, Member
Monica Franklin, Public Member

STAFF PRESENT:

Kendall Lynch, Director
Alison Zane, Legal Counsel
Martha Agee, Board Administrator
Terrence Cannada, Pharmacist Investigator
Harry Fuqua, Pharmacist Investigator
Richard Hadden, Pharmacist Investigator
Ralph Staton, Pharmacist Investigator

The Tennessee Board of Pharmacy convened on Tuesday, March 16, 2004, in Room 160 of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. A quorum of the members being present, the meeting was called to order at 9:00 a.m. CST by Dr. Robert Shutt, President. Director Kendall Lynch introduced and welcomed Mrs. Monica Franklin as the Board's new public member. President Robert Shutt welcomed Mrs. Franklin to the Board of Pharmacy. Director Kendall Lynch introduced two (2) University of Tennessee students, Teresa Crampton and Cindi Lee.

APPROVAL OF THE MINUTES

The **minutes of the January 20 – 21, 2004**, board meeting were presented and reviewed by the Board. Dr. Robert Mitchell motioned to **approve the minutes**; seconded by Dr. Forrest Parmley. All were in favor and the motion carried.

TECHNICIAN TASK FORCE REPORT

Mr. Derek Johnston and Ms. Rhiannon Fitzsimmons, students with the Tennessee Interdisciplinary Program compiled information from state boards of pharmacy relevant to the responsibilities for pharmacy technicians. The Board expressed interest in the tasks being

performed in other states, whether any exclusions were made by other state boards of pharmacy and when the pharmacy technician law became effective. Dr. Julie Frazier agreed to work further to revise the technician rules which will be presented to the Ad Hoc Rules Committee.

CONSENT ORDERS

CHUCK ALVERSON, DPH
P.O. Box 777
Etowah, TN 37331-0777

Ms. Alison Zane, legal counsel, presented a Consent Order for Reinstatement of License for Dr. Chuck Alverson. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Forrest Parmley. All were in favor and the motion carried.

SHEILA CALDWELL, DPH
4190 Indian Brook Cove
Memphis, TN 38125

Legal counsel, Ms. Alison Zane, presented a Consent Order whereas Dr. Sheila Caldwell was in violation of T.C.A. §63-10-506 (a) relevant to working on an expired license. A civil penalty of \$400 was assessed. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

STEVEN DUKE, DPH
1320 Clearbrook Drive
Knoxville, TN 37922

A Consent Order for Reinstatement of License for Dr. Steven Duke was presented by Ms. Alison Zane, legal counsel for the Board. Dr. Robert Mitchell motioned to **accept** the Consent Order for Reinstatement; seconded by Dr. Forrest Parmley. All were in favor and the motion carried.

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EDWARD GRANGER, DPH
1416 Amblewinds Lane
Knoxville, TN 37922

Ms. Alison Zane, counsel, presented a Consent Order for the Reinstatement of License for Dr. Edward Granger. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

EARL HOLMES, DPH
182 Cloud Road
Trenton, GA 30752

Legal counsel, Ms. Alison Zane, presented an Agreed Order for Dr. Earl Holmes whereas he was in violation of T.C.A. §63-10-505 (1) (2) (4) (5) and (6); Rule 1140-2-.01 (1) (2) (4) (10) (11) (a) and (c) (17); T.C.A. §63-10-506 (a); T.C.A. §39-17-417 (a). Dr. Holmes has agreed to a three (3) year term of probation. A civil penalty of \$500 was assessed. Dr. Forrest Parmley motioned to **accept** the Agreed Order; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

STEPHEN JACKS, DPH
2432 Sawmill Street
Murfreesboro, TN 37128

Ms. Alison Zane, legal counsel, presented a Consent Order for Dr. Stephen Jacks who admitted to the diversion of drugs from his employer in 2001. Dr. Jacks has agreed to a three (3) year term of probation. After Dr. Jacks signed the Consent Order with the floater provision under paragraph #h of the terms and conditions for reinstatement, a faxed request was received in the Board office to allow him to float within the Eckerd chain. Dr. Sheila Mitchell motioned to **accept the Consent Order with permission to float**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

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**LARRY LARKIN, DPH
LARKIN DRUG STORE
9713 Tallahassee
Knoxville, TN 37923**

Legal counsel, Ms. Alison Zane, presented a Consent Order for the revocation of Dr. Larry Larkin's pharmacist license due to unprofessional conduct. The pharmacy license for Larkin Drug Store shall also be revoked. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

**JESSE L. MITCHELL, DPH
601 Ferndale Road
Johnson City, TN 37604**

Ms. Alison Zane, legal counsel, presented a Consent Order for Dr. Jesse Mitchell, for the violation of Rule 1140-3-.01 (1) (a) and (b). Dr. Mitchell was assessed a civil penalty of \$250. Dr. Julie Frazier motioned to **accept** the Consent order; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

**WILLIAM SCANDLYN, DPH
P. O. Box 628
Harriman, TN 37748**

A Consent Order for the Reinstatement of Dr. William Scandlyn's pharmacist license was presented by legal counsel, Ms. Alison Zane. Dr. Julie Frazier motioned to **accept** the Consent Order for Reinstatement; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

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DAVID SULLIVAN, DPH
4280 Minden Road
Memphis, TN 38117

Ms. Alison Zane, counsel, presented a Consent Order for the Revocation of Dr. David Sullivan's license pursuant to T.C.A. §63-10-505 (3) for unprofessional conduct. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

WALGREEN PHARMACY #3866
1489 Airways Boulevard
Memphis, TN 38111

Counsel, Ms. Alison Zane, presented a Consent Order whereas Walgreen Pharmacy #3866 was in violation of T.C.A §63-10-506 (a) due to a pharmacist working on an expired license. A civil penalty of \$400 was assessed. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

WAIVERS

TERESA GRISHAM BROWN, DPH
HQ USEUCOM
CMR 480
BOX 2227
APO AE 09128

Dr. Teresa Brown is requesting a waiver of Rule 1140-5-.01 (1) relevant to the Live ACPE continuing education hours required for license renewal. Dr. Brown's husband is currently stationed in Germany and is unable to obtain the live hours. Dr. Reggie Dilliard motioned to **grant** the waiver request; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

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RANDALL A. CARPER, Technician
2852 Boatman Mountain Road
Morristown, TN 37814

Mr. Randall Carper submitted a pharmacy technician application which indicated felony and misdemeanor convictions. Mr. Carper furnished court documents relevant to the probationary period and fines to be paid. Dr. Reggie Dilliard motioned to **grant** the license and obtain copies of court documents from the probation officer. Dr. Robert Mitchell seconded the motion. All were in favor and the motion carried.

ROGER EFFINGER, DPH
4112 Mallard Lane
Conway, AR 72034

Dr. Roger Effinger is requesting a waiver of Rule 1140-1-.07 (3) (c). Dr. Effinger's license was placed in "invalid" status in 1988 and he did not receive the Board's letter relevant to the rule changes in 1998. Dr. Sheila Mitchell motioned to **waive the NAPLEX examination but must meet the remaining requirements of the rule to include thirty (30) hours of continuing education**. Dr. Julie Frazier seconded the motion. All were in favor and the motion carried.

RAYMOND L. FREDERICK, DPH
8704 Farmington Drive
Knoxville, TN 37923

Dr. Raymond Frederick is requesting to be pharmacist-in-charge pursuant to the terms and conditions of the Consent Order he entered into with the Board on May 15, 2002. Director Lynch stated Dr. Frederick has the support from TPRN. Dr. Julie Frazier motioned to **reinstate the PIC privileges effective May 15, 2004**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

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KELLI HARRIS, DPH
2273 W. Indian Paintbrush Circle
Littleton, CO 80129

Dr. Kelli Harris is requesting a waiver of Rule 1140-5-.01 relevant to the Live ACPE continuing education hours. Dr. Harris is a resident of Colorado and has limited availability for obtaining the CE's. Dr. Forrest Parmley motioned to **deny** the request; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

MELISSA RICHARDSON, DPH
555 Hickory Ridge Trail
Ringgold, GA 30736

Dr. Melissa Richardson is requesting a waiver of Rule 1140-5-.01 pursuant to the Live ACPE continuing education hours required for renewal of license for August 2003. The license expired in August, 2001 and no CE's were provided. Dr. Richardson provided fifteen (15) Live hours but did not submit the fifteen (15) regular CE's. Dr. Sheila Mitchell motioned to **deny** the request; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

JAMES ENKEMA, DPH
Two Red Bush Court #3
Johnson City, TN 37601

Dr. James Enkema is requesting a waiver of Rule 1140-1-.07 (3) (c) (2) (3) & (5) relevant to the reinstatement of his pharmacist license. Dr. Enkema's license has been in inactive status since 1993 and expired in October, 1999. The Board office has no record of a receiving a response to the 1998 inactive letter. Dr. Sheila Mitchell motioned to **waive the NAPLEX but must complete the remaining requirements of the Rule**. Dr. Reggie Dilliard seconded the motion. All were in favor and the motion carried.

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SHERRY SAVAGE, DPH
2229 Long Drive
Blairsville, GA 30512

Dr. Sherry Savage is requesting a waiver of Rule 1140-5-.01 pursuant to the Live ACPE continuing education hours required for license renewal. Dr. Savage lives in a small mountain town and it would require her to travel 2 ½ hours to obtain Live CE's. Dr. Sheila Mitchell motioned to **deny** the wavier request; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

WILLIAM R. SORRELL, DPH
734 East 10th Street
Newport, KY 41071

Dr. William Sorrell is requesting a waiver of Rule 1140-5-.01 relevant to the Live continuing education hours. In December, 1999, Dr. Sorrell submitted licensing fees for the renewal period ending 1/31/00 through 1/31/02 without any CE's accompanying the renewal. Dr. Sorrell's license was placed in expired status in April, 2000. An expired letter usually sent to the pharmacist could not be located as Dr. Sorrell's name did not appear on a computer printout. Dr. Sorrell has submitted the appropriate fees and adequate hours of continuing education but was deficient by twenty-three (23) ACPE approved live contact hours. Only seven (7) hours were obtained during the most recent renewal period leaving a deficiency of eight (8) hours. Dr. Sheila Mitchell motioned due to the communication snafu, to **waive the requirement for fifteen (15) hours of Live CE and grant an additional six (6) months to obtain the additional eight (8) hours of ACPE approved Live contact CE.** Dr. Robert Mitchell seconded the motion. All were in favor and the motion carried.

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**JAMES MCMACKIN
WOODRIDGE HOSPITAL
403 State of Franklin Road
Johnson City, TN 37604**

Dr. James McMackin is requesting a waiver of Rule 1140-1-.12 (3) (d) & (e) relevant to the square footage and hot and cold running water for Woodridge Hospital Pharmacy, a psychiatric facility. The current pharmacy location is undergoing construction and will be relocated to a smaller room that houses the automated dispensing machine. There are no medications dispensed or stored at the current pharmacy location. Dr. Julie Frazier motioned to **grant** the waiver; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

**CHAD JAGGERS, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
JACKSON, TN**

Dr. Chad Jagers appeared before the Board along with advocate Dr. Vance Argo with TPRN to request the reinstatement of his pharmacist license. Director Kendall Lynch stated in January 1999, Dr. Jagers entered into a Consent Order with the Board for chemical dependency. In November, 2001, Dr. Jagers was terminated from his job and returned to Charter Lakeside for an evaluation (there was no violation of the Consent Order). In August, 2003 a urine screen tested positive for Tramadol and Dr. Jagers entered Cornerstone for an evaluation. In September, 2003, Dr. Jagers surrendered his license. There are no criminal charges and restitution is being made to his employer. Advocate, Dr. Vance Argo stated Dr. Jagers was compliant with the TPRN requirements and has completed the 90/90 meetings. After board discussion, Dr. Reggie Dilliard motioned:

1. Respondent does hereby agree to the reinstatement of license number **8387** with the following probationary conditions. Said probation shall remain in effect for a period of ten (10) years, from **March 16, 2004 to March 16, 2014.**

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Mike Briley, NP/Bob Souder, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);

- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years; however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;

(i) If the license has been inactive, delinquent, suspended or revoked:

(i) Less than one (1) year, the pharmacist shall:

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education; and
- III. Pay all cumulative license renewal fees and any applicable penalties.

Mrs. Monica Franklin seconded the motion. Dr. Forrest Parmley voted “no”. The motion carried.

COMPLAINTS/LEGAL REPORT

1. Case No.: L03-PHR-RBS-200316067

I presented this case to the Board at the last meeting and the Board authorized me to send the pharmacy technician a letter of warning for failing to offer counseling and the PIC a consent order with \$250.00 civil penalty for failure to counsel. Shortly thereafter, I received a letter from the pharmacy owner stating that the technician did offer to counsel the patient, but counseling was refused. The pharmacy owner also sent me a copy of the counseling log which was signed by the Complainant as “counseling refused”.

To refresh your recollection about the complaint, the Complainant alleges that his medication (antibiotic) was erroneously given to another person, the pharmacy staff refused to fill his prescription and that the pharmacy staff was rude and nasty. The pharmacist confirms that the medication (first prescription) was dispensed to the incorrect person because both patients had the same last name, but different first names. The technician who dispensed the prescription states that she repeated both the first and last names to the person who picked up the prescription and was answered affirmatively. The DPh also confirms that she did refuse to fill the prescription until she could contact the other person to confirm the error. Both the DPh and the technician deny being rude and nasty. Also, the DPh and the technician responses do not indicate that any patient counseling was offered. At the last meeting, the Board voted to send a Consent Order and a Letter of Warning because the technician stated in her response that she just handed the Complainant the prescription.

Recommendation: Affirm prior vote.

Dr. Julie Frazier motioned to **accept counsel’s recommendation**; seconded by Dr. Forrest Parmley. All were in favor and the motion carried. The Board noted the pharmacist/technician may appear before the Board.

2. Case No.: L04-PHR-RBS-200418020

The Complainant alleges that his prescription for Serzone 200 mg was mistakenly filled with Seroquel 200 mg during a recent trip to the pharmacy. The DPh admits the error, but also states that the error was discovered by the Complainant's wife who picked up the prescription. Before she left the pharmacy and was then corrected by the DPh. At that time, the Complainant's wife was offered counseling and signed the Counseling and Insurance Claim Log. However, the Complainant also alleges that the Complainant's prior prescription for Serzone 200 mg was also erroneously filled by Seroquel 200mg and that the patient consumed this incorrect medication for thirty (30) days and began to experience sleep disturbances and depression with suicidal thoughts. The Complainant states that he contacted the pharmacy owner when he realized this misfill. The pharmacy owner told the Complainant to bring in the bottle to the pharmacy, but the Complainant refused. There is no way to verify that this prior misfill occurred.

*Previous complaints: DPh – None
PIC-
Pharmacy- None*

Recommendation: Letter of Warning

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

3. Case No.: L04-PHR-RBS-200418023

The Complainant alleges that the DPh (PIC) substituted generic Glipizide ER 10 mg for Glucotrol XL 10 mg without authorization from the physician. The Complainant claims that before she left the pharmacy, she told the DPh (PIC) that she did not want to take the generic because it would not work. The Complainant states that the pharmacist told her it was the same medicine and to take it home and try it. The Complainant claims that she consumed the generic medication for approximately five (5) days and she experienced an increase in her glucose levels. When the Complainant requested the brand name drug, she claims that the pharmacist purposely delayed clearing her insurance records which caused the Complainant to wait an unusually long amount of time to get the brand name drug at another pharmacy.

The DPh (PIC) states that the prescription was phoned in and there was no notation that the physician requested the brand name product. The pharmacist states that she informed the Complainant that she filled the prescription with the generic and obtained the Complainant's approval for the substitution. The pharmacist also states that she counseled the Complainant about the generic and told her to try it and if she was dissatisfied, she could bring it back in exchange for the brand name. The pharmacist also states that any delay in clearing the insurance records was inadvertent and the result of the Complainant's decision to change pharmacies.

Previous complaints: PIC- None
Pharmacy- 12/98, wrong directions, dismiss; 1/01, expired drug, LOI to PIC; 9/02, misfill, dismiss)

Recommendation: Dismissal

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

4. Case No.: L04-PHR-RBS-200418087

The Complainant is a veterinarian who denied the pharmacy's prescription request for heartworm medication. The request was denied because the animal was not current on its heartworm test. The Complainant claims that she contacted the owner, who denied requesting the medication. The DPh (PIC) states that the owner did request the heartworm medication and produced a copy of that request along with a copy of the owner's payment of the medication. Once the veterinarian denied the request for the medication, it was not dispensed.

Previous complaints: DPh (PIC):
Pharmacy: Several previous complaints resulting in dismissal

Recommendation: Dismissal

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

5. Case No.: L04-PHR-RBS-200418282

The Complainant alleges that he had his prescription for Cholestyramine filled at Pharmacy #1 and that it was in an orange flavor, but that Pharmacy #1 could not refill his prescription because the drug was outdated, which forced him to go to Pharmacy #2. The medication supplied by Pharmacy #2 tasted bad, which caused him to stop taking it and interrupted his treatment. Pharmacy #1 has not committed any violation; they refused to dispense an outdated medication. Our investigator was unable to determine if a misfill occurred in Pharmacy #2 since the product was distasteful to the Complainant. The investigator was unable to obtain any of the boxes, bottles or product from the Complainant for inspection.

Previous complaints: Pharmacy #1: None
Pharmacy #2: None

Recommendation: Dismissal

Dr. Reggie Dilliard motioned to **dismiss** the complaint; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

6. Case No.: L04-PHR-RBS-200418174

The Complainant alleges that the pharmacy has changed his prescriptions for medications such as Prevacid without the physician's approval. The Complainant also alleges that the pharmacy did not give him the correct quantity of drugs on several prescriptions, such as Prevacid and a whole bottle of Docusate Sodium. The Complainant also alleges harassment and discrimination from the pharmacy staff. The DPh (PIC) states that he recalls two (2) occasions in which the Complainant's prescriptions were changed, but with physician authorization: (1). Vancenase AQ was changed to Beconase AQ because of unavailability; and (2). Prevacid was changed to Protonix because of insurance formulary changes. In response to the allegation that the Complainant was shorted on prescriptions, the pharmacist does recall the Complainant trying to refill his prescription for Docusate nine (9) days too early. The pharmacist offered to call the Complainant's physician to increase his daily dosage in order to obtain insurance coverage; however, the Complainant refused. The Complainant returned eight (8) days later, but the pharmacist was unable to obtain insurance approval. When the DPh offered to make phone calls to determine the source of the problem, the Complainant refused.

*Previous complaints: DPh (PIC): 1/2000, Rx not filled promptly, dismissal)
Pharmacy: 11/83, shortage of CS, impaired DPh; 1/2000, Rx not filled promptly, dismissed)*

Recommendation: Dismissal

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

7. Case No.: L04-PHR-RBS-200418357

The complaint alleges that the Respondent, a registered technician, removed a previously-dispensed prescription for Oxycontin, 20 mg, 60 tablets. The technician removed the information stickers from the back of the prescription and attempted to have it filled at another pharmacy within the same chain. The technician was identified as the person who took the prescription to another pharmacy. The technician admitted to taking the prescription from the pharmacy and bringing it to his residence, but he denies attempting to have it filled at another store. The technician was arrested and his employment terminated.

Recommendation: Formal Hearing

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Robert Michell. All were in favor and the motion carried.

8. Case No.: L04-PHR-RBS-200417841

The complaint alleges that the pharmacist was admitted into the hospital because he passed out at work. A toxicology report on the pharmacist indicates that he tested positive for cocaine and alcohol. As a result of the doctor's examination, the pharmacist was diagnosed with depression and admitted that he self-medicates with blood pressure medications and beta blockers. The pharmacist claimed that his girlfriend had cocaine in her purse while she was in his pharmacy and they had a tussel and the bag ripped and he inadvertently inhaled cocaine. After the pharmacist was released from the hospital, he was found with many bottles of medication in the trunk of his car in an effort to sell his pharmacy. We then sent the pharmacist a Consent Order for the revocation of his pharmacist's and pharmacy license, which he signed.

Recommendation: Accept signed Consent Order for Revocation of pharmacist and pharmacy license.

Consent Order accepted by the Board.

9. Case No.: L03-PHR-RBS-200317150

The Complainant alleges that a copy of her pharmacy patient profile was provided to her spouse without her permission in the midst of some marital difficulties. The PIC indicates that a request for information was not signed and none of the pharmacists or technicians remembers having supplied the Complainant's patient profile to the spouse. However, the PIC does indicate that at the time that this disclosure allegedly occurred, their policy would have allowed them to give a copy of the patient profile to the spouse, unless they had knowledge that the spouse was not presently involved in the care of the patient or that the patient had requested that the spouse not receive that information. The policy has since been changed so that the patient's spouse would only be able to obtain the patient's information if the spouse signs a request for information and the pharmacist is confident that a patient-caregiver relationship exists; otherwise, the information will be mailed to the patient directly.

Rule 1140-2-.01(6) states that "Except where the best interest of the patient requires or the law demands, a pharmacist shall not disclose such information to anyone without proper patient authorization."

*Previous complaints: DPh (PIC): None
Pharmacy: None*

Recommendation: Letter of Warning to the PIC advising him of Rule 1140-2-.01(6) and asking him to change his P & P accordingly.

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

10. Case No.: L03-PHR-RBS-200316797

The Complainant alleges that the pharmacy refused to fill her prescription for Eskalith CR with a brand name when the physician indicated “dispense as written” and that the pharmacy wanted to give her the generic, Lithium Carbonate. The Complainant did not want the generic, so she went to another pharmacy to have it filled. The pharmacist states that it is their policy to dispense generic drugs when TennCare will only pay for the generic drug and the generic is available. However, if the physician has designated “dispense as written”, then the pharmacy will obtain the physician’s authorization to change the prescription. The pharmacist was unable to respond to the specific allegations; he was only able to address the pharmacy’s policy.

*Previous complaints: DPh (PIC): None
Pharmacy: None*

Recommendation: Dismissal

Dr. Reggie Dilliard motioned to **accept counsel’s recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

11. Case No.: L03-PHR-RBS-200313730

The complaint alleges that a nursing home patient (Patient Number One) was given Coumadin, when a patient (Patient Number Two) with a similar name should have been given the medication. This complaint originated with the Board after the PIC notified the Board of “any situation in which a medical or prescription order has caused serious injury or death.” Investigation determined that the pharmacy misfilled the prescription by putting it in the wrong patient’s name. However, the nursing staff also did not dispense the medication according to the MAR and therefore, did not notice the error. Our investigator determined that at the nursing home all of the Coumadin was charted on the correct patient and that there was no documentation that Patient Number One ever received any dosages of Coumadin. However, when the patient expired from an aneurysm, she had a very high Coumadin level. It appears that the patient was given the Coumadin for approximately two (2) months before she expired. We cannot determine that the patient expired as a result of the Coumadin.

*Previous complaints: DPh: None
Pharmacy: (4/2001, overcharge, dismissal; 1/2000, dispensed meds after death, dismissal)*

Recommendation: Letter of Warning

Dr. Robert Mitchell motioned to **accept counsel’s recommendation**; seconded by Mrs. Monica Franklin. Dr. Julie Frazier recused from voting. The motion carried.

12. Case No.: L03-PHR-RBS-200317151

The complaint alleges that the Respondent, registered technician, admitted to altering the number of refills on a prescription on more than one (1) occasion without the physician's authorization and billed these refills to the patient's insurance company. The technician also states that her employer did not have any knowledge of her activities. The technician also stated that she wished to "surrender her certification" and sent us her actual certification.

Recommendation: Consent Order for Surrender of registration (Formal Hearing)

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

13. Case No.: L03-PHR-RBS-200317277

The Complainant alleges that she received a prescription for Sular for another patient with the same last name, instead of her prescription for Buspirone. The labels on the bags were correct, but the label on the bottle belonged to another patient. The patient consumed the incorrect medication, which caused her to go to the emergency room, where her blood pressure was monitored and an EKG was performed. The PIC states that the Complainant did receive another patient's medication. When the pharmacist was notified of the error, she told the Complainant to come and pick up the correct medicine. Later that afternoon, the Complainant's niece called the pharmacist and told her that the Complainant took one (1) of the pills and was in the emergency room. As a result of this incident, the PIC states that they have changed the technician schedule to bring the morning technician in earlier.

*Previous complaints: DPh: None
Pharmacy: None*

Recommendation: Letter of Warning to DPh.

Dr. Julie Frazier motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

14. Case No.: L04-PHR-RBS-200417858

The Complainant alleges that the patient's prescription for Hydroxyzine was mistakenly filled with Hydralazine. The patient consumed two (2) doses and required an emergency room visit and follow-up treatment. The PIC admits that the error occurred. Specifically, a prescription written for Hydroxyzine 50 mg was entered as Hydralazine 100 mg. The error was discovered and corrected when the Complainant returned to the pharmacy to verify the contents of the bottle six (6) days after the prescription was filled; the Complainant was given the correct medication and a refund.

Previous complaints: DPh: None

PIC:
Pharmacy: None

Recommendation: Letter of Warning to the DPh and the PIC suggesting that she review the verification process with the staff and advise this office of the steps taken to prevent a recurrence within thirty (30) days of receipt of this letter.

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

15. Case No.: L03-PHR-RBS-200316367

The complaint alleges that the Respondent sells Valium and Xanax without prescriptions and also fills prescriptions for Lortab that other pharmacies will not. The complaint does not provide dates or documentation. An investigation discovered that pharmacy fills a larger than normal amount of prescriptions containing controlled substances, but these prescriptions were provided for a pain clinic and were rarely allowed to be refilled by the prescribing physician. No evidence was found to support the allegation of the sale of unprescribed Valium and Xanax.

Previous complaints: DPh: (10/94, unsigned CII Rx, Reg. letter); (11/95, selling drugs w/o Rx, dismissed); (12/81, failure to account for the disposal of CS, 3years probation, CP \$2,100).
Pharmacy: (same as above)

Recommendation: Dismissal.

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

16. Case No.: L04-PHR-RBS-200417862

The Complainant alleges that she received prescriptions on four (4) separate occasions of medications that contained yellow dye when it is documented in pharmacy computer system that she is allergic to yellow dye. Specifically, the Complainant claims that she received a prescription for Hydrochlorothiazide, (HCTZ) 25 mg, which is a peach colored tablet. She consumed it for sixty-six (66) days before discovering that it contained yellow dye. As a result, the Complainant states that she became "very, very sick" and stopped eating. On another occasion, the Complainant received a prescription for Diltiazem CD 300 mg, a green and gray capsule. Before consuming the medication, the Complainant requested that the DPh make certain that the medication did not contain yellow dye. When it was discovered that it did, the prescription was replaced with another brand that does not contain yellow dye. The DPh acknowledges that the comment field of the Complainant's patient profile states that she is allergic to yellow dye and that the two (2) prescriptions described by the Complainant were in fact, dispensed to her. In response to this complaint, the PIC informs us that words "no yellow dye" is in her name profile, so that it will print on

her labels. Also, they will include a package insert with the ingredients in all medications dispensed to her, with the inactive ingredient highlighted.

Previous complaints: DPh (PIC): None
Pharmacy: None

Recommendation: Letter of Warning to DPh

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

17. Case No.: L04-PHR-RBS-200417967

The complaint alleges that the patient was mistakenly dispensed Seroquel instead of Serzone. The patient consumed approximately six (6) tablets of the incorrect medication and then experienced dizziness and fainting, which required the patient to go to the emergency room. The DPh admits that the error occurred. The DPh called the patient's doctor after he became aware of the patient's emergency room visit and then went to the patient's house at night to give her the correct medication. The patient and her family still use the pharmacy to date.

Previous complaints: DPh: None
Pharmacy:

Recommendation: Letter of Warning to DPh and PIC to identify the steps taken to prevent recurrence of this error within thirty (30) days of receipt of this letter.

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

18. Case No.: L03-PHR-RBS-200314126

The complaint alleges that the Respondent is a storefront, which facilitates the sale of Canadian drugs. Our investigator recently confirmed that the storefront is out of business.

Recommendation: Closure

Dr. Julie Frazier motioned to **accept counsel's recommendation**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

19. Case No.: L04-PHR-RBS-200418571

The complaint alleges that the Respondent, a registered technician, admitted to taking the following controlled substances from her employer: (1). Fifty (50) to sixty (60) of Hydrocodone 10/500 and (2).Ten (10) Hydrocodone 10/325. The Respondent was arrested and her employment terminated.

Recommendation: Formal Hearing

Dr. Forrest Parmley motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

20. Case No.: L04-PHR-RBS-200418570

The complaint alleges that the Respondent, a registered technician, admitted to taking the following controlled substances from her employer: (1). 2,460 units of Hydrocodone 10/500 and (2).Two (2) Hydrocodone 10/325. Also, three (3) Hydrocodone tablets were discovered in her pocket at the time of arrest. The Respondent's employment was terminated.

Recommendation: Formal Hearing

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

JURISPRUDENCE EXAM – MEMPHIS, TENNESSEE

The Jurisprudence Exam is scheduled for Wednesday, May 26, 2004 @ 9:00 a.m. in Memphis, Tennessee, for the University of Tennessee College of Pharmacy students. Dr. Terry Cannada, Dr. Terry Grinder, Ms. Kolleen Jeffery and Ms. Kay Revelle will administer the exam.

**PRESCRIPTION LABELING REQUIREMENTS
PROPOSED POLICY – RULE 1140-3-.06**

Director Kendall Lynch stated Rule 1140-3-.06 states in part, "expiration date of the product" terminology is intended for beyond use date and the patient is possibly misinterpreting. Dr. Sheila Mitchell motioned to **accept** the Board's proposed policy for beyond use date; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

PRESCRIPTION LABEL

Rule 1140-3-.06 addresses the contents of dispensing label for a medical or prescription order and states in part; “expiration date of the product (if applicable).”

While not specifically expressed, the rule is intended to assure that patients are made aware of the beyond-use date of the product dispensed.

The board is aware that some computer systems routinely apply a statement on the label indicating that the prescription expires one year after the date it is originally dispensed. This statement should not be confused with expiration date (beyond use date of the product) identified in the rule.

SUMMARY OF USP* 797 – PHARMACEUTICAL COMPOUNDING – STERILE PREPARATIONS

The content of this chapter applies to health care institutions, pharmacies, physicians practice facilities and other facilities in which compounded sterile preparations are prepared, stored and dispensed. President Robert Shutt appointed Dr. Sheila Mitchell to review the chapter for applicability.

JULIE D. FRAZIER, DPH
THE PHARMACY, AN OMNICARE COMPANY
Nashville, TN

Dr. Julie Frazier is inquiring whether a “hub and spoke” model for pharmacy practice falls within the scope of the Board’s current pharmacy rules. Omnicare operates five (5) pharmacies in Tennessee. A “hub” pharmacy is where all the carts are filled, refilled, and billing and medical records are produced. A “spoke” pharmacy is where new prescriptions are processed and the first fill is done. The hub and spoke pharmacy will maintain the same prescription files as they will operate off the same computer system. Both pharmacies will be licensed and pharmacists will exist at each location. Legal counsel, Ms. Alison Zane was of the opinion that the model was consistent with the existing rules.

JURISPRUDENCE EXAM '04 – NEW QUESTIONS

Dr. Sheila Mitchell motioned to **approve** the new questions for the Jurisprudence Exam; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

ADJOURNMENT

Dr. Sheila Mitchell motioned to adjourn the meeting on Tuesday, March 16, 2004 at 3:00 p.m. CST; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

RECONVENED

The Board of Pharmacy reconvened on Wednesday, March 17, 2004, at 9:00 a.m. CST in Room 160 of the Davy Crockett Tower. President Robert Shutt called the meeting to order. All members were present.

RICHARD ROBINSON, DPH – REQUEST FOR REINSTATEMENT OF LICENSE. KINGSPORT, TN

Dr. Richard Robinson appeared before the Board to request the reinstatement of his pharmacist license. Director Kendall Lynch stated Dr. Robinson pled guilty to five (5) felony counts for unlawfully dispensing controlled substances, a Class D felony. Dr. Robinson was sentenced to four (4) years probation and during the probationary period, he could not practice as a pharmacist. On December 16, 2003, the Criminal Appeals Court in Knoxville, Tennessee ruled that the lower court did not have the authority to restrict the license, but did not overturn the felony conviction. Dr. Robinson entered into a Consent Order with the Board on June 5, 2003, and agreed to the revocation of his license. Dr. Robinson will need to obtain a DEA waiver due to the felony conviction. After board discussion, Dr. Julie Frazier motioned to **deny** the reinstatement of license due to being on probation for the

felony conviction. Once the probationary period is ended you have the right to appear before the Board for reinstatement of your license. Dr. Robinson was also advised to obtain advocacy. Dr. Robert Mitchell seconded the motion. All were in favor and the motion carried.

**JAMES PICKLE, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
NASHVILLE, TN**

Dr. James Pickle appeared before the Board along with advocate, Dr. Tommy Malone with the Concerned Pharmacist Group, to request the reinstatement of his pharmacist license. Director Kendall Lynch stated Dr. Pickle admitted to chemical dependency in January, 1993 and entered into a five year probationary term with the Board. On January 27, 2004, Dr. Pickle came into the Board's office and asked to have his license placed in "inactive/retired" status as a random urine screen conducted at work tested positive for Marijuana. Dr. Pickle attended an EAP program through his employer and signed a "Last Chance" Agreement. Dr. Tommy Malone stated Dr. Pickle was compliant with the Concerned Pharmacist Group requirements. After board discussion,

Dr. Julie Frazier motioned:

1. Respondent does hereby agree to the reinstatement of license number **4930** with the following probationary conditions. Said probation shall remain in effect for a period of ten (10) years, from **March 17, 2004 to March 17, 2014.**
 - (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
 - (b) The Respondent shall be able to consume legend drugs or controlled substances

prescribed by the Respondent's primary physician, Greg Witters, MD, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;

- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Concerned Pharmacists Group for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid

prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;

- (g) Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Concerned Pharmacists Group. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (h) Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- (i) If the license has been inactive, delinquent, suspended or revoked:
 - (i) Less than one (1) year, the pharmacist shall:**
 - I. Provide written notice requesting an active license;
 - II. Satisfy all past due continuing pharmaceutical education; and
 - III. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Reggie Dilliard recused from voting. Dr. Sheila Mitchell seconded the motion. The motion carried.

#200418807
PHARMACY TECHNICIAN

Director Kendall Lynch stated he received a telephone call from a paralegal relevant to a technician who had received a registration in November, 2003. The technician stated, upon advice received from a co-worker, under the violation section of the application stating, "Have you ever been convicted of a felony?" she replied "no". In 1985, the technician was charged with misapplication of funds while employed at a bank. The technician completed the sentence and probation, was fined \$50 by the U. S. Courts, and has made restitution. The felony is almost twenty (20) years old. The technician contacted an attorney regarding the application that was submitted. The Board expressed concern relevant to who may have instructed the technician to falsify the application. Director Lynch stated a complaint would be opened.

ADJOURNMENT

Dr. Reggie Dilliard motioned to adjourn the Board of Pharmacy meeting on Wednesday, March 17, 2004 at 10:30 a.m. CST; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

Respectfully submitted,

Robert Shutt, President

Kendall M. Lynch, Director